



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	02/16/11	Bill No:	Assembly Bill 563
Tax Program:	Property	Author:	Furutani
Sponsor:	City of Los Angeles	Code Sections:	RTC 408
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

This bill allows city employees to obtain or access otherwise confidential information held by the county assessor when the city is conducting an investigation to determine whether the documentary transfer tax is to be imposed.

ANALYSIS

CURRENT LAW

The law requires that assessors keep certain information confidential. Revenue and Taxation Code Section 408(a) contains the general confidentiality rule for county assessors and provides that homeowners' exemption claims and any information and records in the assessor's office that are *not required*¹ by law to be kept or prepared by the assessor are not to be open to public inspection. In addition, Sections 451 and 481 provide that all information requested by the assessor or furnished in the property statement and change in ownership information shall be "held secret" by the assessor.

Subdivision (b) of Section 408 provides an exception to the general rule of confidentiality for certain governmental agencies or representatives. It requires that the assessor disclose information, furnish abstracts, or permit access to all records in his or her office to those agencies or representatives specified.

Part 6.7 of Division 2 of the Revenue and Taxation Code (§§11901-11935) relates to the documentary transfer tax (DTT) for counties and general law cities. Charter cities may also levy a DTT pursuant to a local ordinance and their own authority under the "municipal affairs" doctrine². The locally imposed documentary transfer tax is generally collected by the county recorder at the time documents are presented for recording.

PROPOSED LAW

This bill would amend subdivision (b) of Section 408 to add city employees to the list of agencies that the assessor is required to disclose information, furnish abstracts, or permit access to records in the assessor's office for purposes of determining whether a DTT is to be imposed.

¹ There are only very limited records that are required to be kept by the assessor, such as the assessment roll and the list of property transfers.

² Under the constitutional "municipal affairs" doctrine, charter cities can levy taxes which have not been preempted by the state or federal governments (Article XI, §5)

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IN GENERAL

Documentary Transfer Tax. The DTT was enacted by Ch. 1332 of the Statutes of 1967 and became operative on July 1, 1968 to replace the repealed Federal Documentary Stamp Tax (former 26 U.S.C. §§4361, 4363). It authorizes counties to approve an ordinance to impose a documentary transfer tax, which applies to deeds of transfer of realty within that jurisdiction and is based on the value of the transfer. In counties, the rate is fifty-five cents (\$0.55) for each five hundred dollars (\$500) of value. While the rate in statute is stated per \$500, in practice the rate is often expressed as \$1.10 for each \$1,000 of value. All of California's 58 counties apply the tax, which is modeled after the previously imposed Federal Stamp Tax. Cities are also allowed to enact ordinances to impose the tax as follows:

General law cities (non-charter cities) within a county that impose a DTT may apply the tax at half the county rate and it applies as a credit against the county tax (i.e., the total rate will still be fifty-five cents (\$0.55) for each five hundred dollars (\$500) of value and the city and county will equally share in the proceeds). As of 2010, there were 361 general law cities.

Charter cities may impose a DTT at a higher rate under the municipal affairs doctrine of the California Constitution (Article XI, Section 5). If they impose a DTT at a higher rate than the non-charter rate, then the city DTT does not serve as a credit against the county tax. The tax imposed by cities is referred to as the Documentary Transfer Tax, the Real Property Transfer Tax, or the Real Estate Transfer Tax. The provisions in the Revenue and Taxation Code do not apply to charter cities. Section 2 of Ch. 1332, Stats. 1967 provided that no city or county shall directly or indirectly impose a tax on transfers of real property not in conformity with Part 6.7, but that for purposes of this prohibition, it does not apply to charter cities or San Francisco (a city and county). As of 2010, there were 120 charter cities. Between 25 and 30 of those cities impose a higher rate – the lowest at about \$2.00 per \$1,000 and the highest at \$15.00 per \$1,000.

DTT is an Excise Tax. The courts have held that the documentary transfer tax is an excise tax. It is neither a property tax nor is it a transaction tax or sale tax on the transfer of real property, which is prohibited by Article XIII A, Section 4 of California Constitution. A transfer tax attaches to the privilege of exercising one of the incidents of property ownership, its conveyance. Such a tax is an excise tax, rather than a property tax, imposed solely on the privilege of disposing of one's property and realizing its actual value. *Felder v. City of Los Angeles* (1993) 14 Cal.App.4th 137; *Fisher v. Alameda County* (1993) 20 Cal.App.4th 120.

Administration of the DTT. The county recorder generally collects the DTT on behalf of the counties and cities.

BACKGROUND

SB 816 (Stats. 2009, Ch. 622, Ducheny) amended Section 408 to authorize the assessor to provide confidential information to the county recorder for purposes of investigating whether the DTT should be imposed. In addition, SB 816 added Section 11935 to expressly authorize a county board of supervisors to establish an administrative appeal process for the DTT and specify that the value determined for purposes of the DTT is not binding on the value determined for property tax purposes.

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COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the city of Los Angeles to obtain access to data or information it needs to ensure the proper imposition of the documentary transfer tax.
2. **Issue.** The county recorder generally collects the DTT on behalf of counties and cities. In the city of Los Angeles, a charter city, the agreement for the collection of taxes between the city and county provides that if the county is unable or does not collect the DTT when the instrument or writing is presented for recordation, the city is responsible for collecting the DTT. Also, a person may claim an exemption from the DTT which may require further investigation by the city to verify. Furthermore, a city may conduct periodic audits of city revenues related to documentary transfer taxes. Such an audit could require access to assessor records to determine the proper imposition of the tax.

COST ESTIMATE

The BOE would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

This bill has no property tax revenue impact.

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